IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL PETITION NO.2564 OF 2006

Sanjay Krishna Gothal,
Age - 42 years,
Indian Inhabitant, Residing at
Pitamaha Ramji Nagar,
Near Municipal School No.1,
Batwadi Bharve Nagar,
Ghatkopar (West),
Mumbai - 400 084. ..**Petitioner**

Versus

1. Chandra Iyenger,
The Principal Secretary to the
Government of Maharashtra,
Home Department (Preventive
Detention) and Detaining
Authority, Mantralaya, Mumbai.

2. The State of Maharashtra
through the Secretary to the
Government of Maharashtra,
Home Department (Preventive
Detention), Mantralaya, Mumbai.

3. The Superintendent of Mumbai,
Central Prison, Mumbai.

4. The Superintendent of Nasik Road
Central Prison, Nasik. ..**Respondents**

Mrs.A.M.Z.Ansari,for the Petitioner.
Mr.D.S.Mhaispurkar, A.P.P.for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
A.A.SAYED,JJ.

DATE : 31ST AUGUST,2007

JUDGMENT (PER DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioner, who is the brother of the detenu Rajesh Krishna Gothal is challenging the detention of the said detenu. The impugned detention order is dated 17/08/2006 and the same was passed by the Principal Secretary (Appeals

and Security) Government of Maharashtra, Home Department and the Detaining Authority under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974, hereinafter referred to as the "said Act", on the ground that with a view to prevent the detenu in future from smuggling of goods, it was necessary to detain him under the said Act. The detenu Rajesh Krishna Gothal was traced, arrested and detained on 14/09/2006 and on the very same day, the detenu was furnished with the detention order and also the grounds for passing such a detention order along with the compilation of documents.

2. The brief facts are that the Intelligence Officers of D.R.I. Mumbai mounted surveillance with panchas in the Arrival Baggage Hall of Module 2 C, at Chatrapati Shivaji International Airport, Mumbai and observed the activities of employees of various Courier Companies on 02/04/2006 from 7.30 p.m. onwards. During the said surveillance period, it was noticed that the detenu was opening a courier bag from the three bags near the conveyer belt bearing OCS markings. It was also found that the detenu thereafter removed two brown colour cartons and was repacking the same in another courier bag belonging to M/s.Fedex. The D.R.I. Officers, immediately became suspicious and apprehended the detenu and the detenu appears to have stated to the Officers that he was an

employee of OCS and that the two brown colour cartons, which he had removed from OCS Courier Bag and had put into M/s.Fadex Courier bag, the Courier bags were containing RAM cards and the same were to be taken out of the baggage hall without filling the prescribed documents/declarations to the Customs Authority and also without payment of Customs Duty, by concealing the same in the other OCS Courier documents, samples and parcel bags. It was also revealed that this was a plan evolved with one of the colleagues of the detenu viz.Vijay Ramchandra Panchal, who was also present at the said baggage hall. In view thereof, both the detenu and the said Vijay Ramchandra Panchal were apprehended by the D.R.I.Officers. It appears that the said Vijay Ramchandra Panchal had also informed that the modus-operandi was to clear the electronic items (RAM cards) without paying customs duty and deliver the same to one Mr.Kamal outside the Airport and the monetary consideration was to be shared between the two. The D.R.I. Officers examined both the brown cartons from the said Courier Bags of M/s.Fadex and found those cartons containing 1700 pieces of RAM cards of different types totally valued at Rs.13,52,900/-. Accordingly those 1700 pieces of RAM cards were seized. The aforesaid three bags were also examined and they were containing documents and two samples. The same were handed over to Custom Authorities for clearance. On interrogation, the modus operandi appeared to be that one Shri.Kamal Rohit

Reshamwala, the said Vijay Ramchandra Panchal and the detenu were to get these electronic items from Hong Kong and on arrival these high valued electronic items were to be shifted into a Courier bag containing documents and samples which bear no customs duty. It was also contended by the D.R.I.that the detenu was clearly informed by the Vijay Ramchandra Panchal the Modus Operandi that the aforesaid goods will have to be cleared without paying any duty and handover the same to one Kamal Rohit Reshamwala, outside the Airport and that they were to share the monetary consideration. The detenu's statements were recorded on 03/04/2006 and also on 12/05/2006. On interrogation, it was also found that the detenu was earlier involved in clearing similar consignments without paying customs duty and that the present consignment had arrived by Air India Flight No.AI-315 on 23/03/2006 around 12.30 a.m. and the parcel was also cleared changing into "documents bags only" and as such the same was cleared without payment of any duty. After completing entire investigation and recording various other collateral statements, D.R.I. had forwarded all the documents and proposals to the Detaining Authority and thereafter the same were duly processed by the Office of the Detaining Authority at various levels and the detention order was finally issued on 17/08/2006 and the detenu was arrested and detained on 14/09/2006.

3. Mrs.Ansari, the learned Counsel appearing on behalf of the detenu challenged the aforesaid detention order only on two grounds, though various other grounds are raised in the Petition. The first ground is that the detention order has been passed alleging that the detenu ought to be detained so as to prevent him in future from smuggling the goods. The learned Counsel for the Petitioner also contended that the activity alleged against the detenu would not amount to smuggling of goods and that at the most it would fall under Section 3(ii) and/or 3(iii) of the said Act i.e. abetting the smuggling of goods, or engaging in transporting or concealing or keeping smuggled goods. Therefore, Mrs.Ansari strongly contended that the detention order was passed by total non application of mind in the sense that there was no allegation of any kind of smuggling alleged against the detenu in view of the facts disclosed hereinabove. According to the learned Counsel for the Petitioner, the aforesaid order cannot be sustained at all, since the only ground on which the detenu had been detained is on the ground of preventing him from smuggling of goods, whereas at the most it would be only abetting the smuggling of goods.

4. In that behalf Mrs.Ansari has referred to and relied upon the recent judgment of our Court in the case of **Mabelaranah Niranjan Puthran Vs. State of**

Maharashtra dated 08/08/2007 and contended that in the said case, the detenu was only facilitating the smuggling activity and had not actually smuggled and as such, the detention order was set aside. To put it in other words, in the abovereferred case, the detenu had only facilitated the illegal import and the actual smuggling was committed by the owner of the goods. Therefore, such a detenu cannot be detained on the ground of smuggling of goods but can only be detained on the ground of abetment of smuggling of goods. Under the aforesaid facts and circumstances of the case, the said detention order was set aside in the aforesaid case. Mrs.Ansari, very strongly relied upon the said judgment in support to contend that even in the present case the facts disclosed do not amount to any act of smuggling by the detenu and as such the order should be set aside.

5. Mrs.Ansari raised a second ground contending that the detenu would be totally incapable of indulging in the activities alleged therein, since the detenu was an employee of M/s.OCS Courier Service Co.and his services were immediately terminated by the employer in the month of April,2006 itself, when the aforesaid incident had taken place, and in view thereof Mrs.Ansari contended that the detenu would not be able to enter the baggage hall as he was not the employee of the said Courier Company. The Detaining Authority was fully aware of the same that the detenu

was not in employment of the said Courier Company and even then the said detention order has been passed without application of mind. Since the detenu would not be able to enter the Airport baggage hall, he would not be able to commit any prejudicial activity of smuggling or abetting of smuggling. In that behalf Mrs.Ansari also referred to and relied upon a judgment of this Court in the case of **Arvind Sudkoji Mohite Vs. State of Maharashtra in Criminal Writ Petition No.747 of 1985 dated 08/01/1986,** wherein this Court had considered the case of employee of Air India, whose services were terminated and as such he would not be able to enter the Airport in the Customs Area. Accordingly, the detention order was set aside. Therefore, Mrs.Ansari contended that in the instant case also, as the services of the detenu have been terminated by the Courier Company, the detenu would not be able to enter the customs area and there was no likelihood of indulging in such a prejudicial activity and as such, the Detention Authority though aware of the same, had wrongly passed the said detention order by non application of mind.

6. Therefore, Mrs.Ansari contended that on both the aforesaid grounds, the detention order dated 17/08/2007 should be quashed and set aside by this Court.

7. Mr.Mhaispurkar, the learned A.P.P. appearing on behalf of the Respondents, contended with regard to first ground i.e. activity of the detenu would only amount to abetting of smuggling and not actual smuggling and as such, the detention order passed was bad. With regard to the said contention, Mr.Mhaispurkar brought to our notice the definition of the word "Smuggling" under Section 2(39) of the Customs Act,1962, which reads as under:-

> **2(39)** "Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

8. Mr.Mhaispurkar also brought to our notice the provisions of Section 111 of the Customs Act,1962, especially Section 111(i) and (j), which read as under:-

> 111. **Confiscation of improperly imported goods, etc.:-** The following goods brought from a place outside India shall be liable to confiscation:-.....
> .....
>
> i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
>
> j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

9. Mr.Mhaispurkar contended that in the above matter, the goods had landed in Mumbai Airport and were dispatched as RAM cards and as such they ought to

have been cleared properly as RAM cards. In the above, it is not a case of mis-declaration of the goods and it had arrived as RAM cards. The aforesaid two employees of M/s.OCS Courier Service Company along with said Kamal Reshamwala had conspired to evade payment of customs duty and by clearing the said goods without declaring the same and removing the said goods and putting it into a courier bag containing documents and samples and getting it cleared without payment of any duty. Therefore, he contended that the above act of removing the goods and concealing it in such a manner and also removing the goods from the Customs area without permission from the proper Authority would clearly amount to an act of smuggling. He emphasises that as per the provisions of Section 111(i) and (j) of the said Act, it would amount to an act of smuggling. He also contended that the aforesaid judgment of the Division Bench in the case of **Mabelaranah Niranjan Puthran Vs. State of Maharashtra dated 08/08/2007** will not be applicable to the present case, as in the said case, detenu was only assisting and facilitating the goods, which were already smuggled. In the instant case, the goods had landed properly however, the act of smuggling was by concealing the aforesaid dutiable goods in a Courier bag containing only documents and samples, thereby totally evading Customs Duties which would clearly fall under Section 111(i) and (j) of the Customs Act. Mr.Mhaispurkar contended that there is no question of

any non application of mind by the detaining authority as the facts disclosed clearly indicate that the activities of the detenu in the month of April,2006 were that of "smuggling".

10. With regard to the second ground of challenge i.e.the employment of the detenu was terminated in the month of April,2006, hence there was no likelihood of indulging in such an act of smuggling, Mr.Mhaispurkar contended that in the aforesaid judgment of the Division Bench relied upon by the learned Counsel for the Petitioner i.e. **Arvind Sudkoji Mohite Vs. State of Maharashtra in Criminal Writ Petition No.747 of 1985 dated 08/01/1986,** this Court had categorically held that no explanation was given by the detaining authority as to why the order of detention was passed, when the services of the detenu were terminated. Mr.Mhaispurkar therefore contended that in the instant case, the Authority was fully aware of such termination of services and even then the Authority has given reasons as to why the detenu is still likely continue to carry out such smuggling activities specially in paragraph 10 of the affidavit of Principal Secretary, Public Health Department, Government of Maharashtra, dated 05/06/2007, wherein it is clearly mentioned that the Authority was fully aware that the services of the detenu were terminated, however, considering the well organized manner in which the smuggling activities were carried out by the

detenu and his associates, and the role played by the detenu in removing the goods and getting the same cleared without payment of customs duty and his involvement in the past, the Detaining Authority was fully satisfied that even if the detenu's services were terminated, that by itself would not prevent him from indulging in similar activities in future. Mr.Mhaispurkar therefore, contended that in the instance case the Detaining Authority was fully aware of the termination of such services and even then having regard to the facts and circumstances of the case and after applying mind, the Principal Secretary has came to conclusion that mere termination of services would not hamper the detenu from continuing to indulge in such prejudicial activities of smuggling.

11. Mr.Mhaispurkar, in that behalf referred to and relied upon a judgment of the Hon'ble Supreme Court in the case of **Sitthi Zuraina Begum Vs. Union of India and others 2002 AIR SCW 4807**, wherein, the Hon'ble Supreme Court in paragraph No.9 had observed in the context where a detenu's passport was cancelled still the Court felt that "an inference can be drawn that the detenu was a part of bigger network in bringing the goods for commercial distribution inside the country by avoiding payment of duty. In this back ground, absence of passport will not be a handicap to the detenu for his activities".

12. Mr.Mhaispurkar also referred to a Division Bench Judgment of our Court in the case of **Mohan Chhaturmal Daryani Vs. State of Maharashtra, 2004 ALL MR (Cri) 2766**, wherein in paragraph No.9, this Court had clearly observed that " the smuggling activities may be carried out with the help of forged documents or by obtaining fresh passport giving new address and also that such prejudicial activities can be carried out even without a passport". Mr.Mhaispurkar, therefore contended that in view of the organized manner in which the detenu was involved in a larger group, the detenu would still be able to indulge in the act of smuggling by managing entry into the Customs area or by forging certain documents. Under these circumstances, Mr.Mhaispurkar contended that no fault can be found on this ground that the Detaining Authority has not applied its mind with regard to the termination of the services of the detenu and that as such the detenu would not be able to indulge in such prejudicial activities.

13. Having heard both the learned Counsel and after considering all the aforesaid judgments with regard to the first contention of Mrs.Ansari, that the activities of the detenu at the most involved only abetting of smuggling and not "smuggling", we are unable to accept the said contention in the light of the clear definition of word "Smuggling" under Section

2(39) read with Section 111(i) & (j) of the Customs Act. Section 111(i) and (j) make it abundantly clear that the activities indulged by the detenu would clearly fall within the same and as such the goods would be liable for confiscation and if that be so, it amounts to an act of smuggling. There is no dispute that the detenu had removed both the brown cartons containing RAM cards and had kept them in a Courier bag containing only documents and samples and he had also admitted that the same were for the purpose of clearing it without payment of any duty, if that be so, the said activity would clearly fall within section 111 (i) and (j) of the Customs Act. Over and above, we are clearly of the view that the judgment referred and relied upon by the learned Counsel for the Petitioner i.e. **Mabelaranah Niranjan Puthran Vs. State of Maharashtra dated 08/08/2007** will have no application in the present case, since in that case, the Court had held that there was no act of smuggling or there was only an act of facilitating the smuggling, whereas, in the present case, we are of the view that the activity of detenu amounts to "smuggling" and hence, the said judgment is not applicable to the present case. Hence the first ground of objection has no merit.

14. With regard to second contention that the Authority had not applied its mind while passing the order of detention specially in view of the fact that

the detenu's services were terminated in the month of April,2006 and as such, the detenu would not be able to indulge in such prejudicial activities, from a bare perusal of the aforesaid judgment of the Supreme Court in the case of **Sitthi Zuraina Begum Vs. Union of India and others 2002 AIR SCW 4807** as well as the Division Bench Judgment of our Court in the case of **Mabelaranah Niranjan Puthran Vs. State of Maharashtra dated 08/08/2007**, it is very clear that the detenu being a part of large organized group indulging in smuggling activities, would be able to easily manage to continue to do the said activities even though he may not be in employment of the said Courier Company. He would be able to obtain employment in an another Courier Company easily and/or even forge certain documents and would have access in the Customs area. Under these circumstances, we are also not satisfied with the second ground of challenge to the aforesaid detention order.

15. Under the aforesaid facts and circumstances of the case we find both the grounds of challenge are not sustainable. We find no merit in the above Petition.

Hence, the Rule stands discharged.

(A.A.SAYED,J.) **(DR.S.RADHAKRISHNAN,J.)**